

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION**

**CONTINENTAL CASUALTY COMPANY,)
Plaintiff,)
v.)
ALABAMA EMERGENCY ROOM)
ADMINISTRATIVE SERVICES, P.C.)
Defendant.)**

CASE NO.: 2:07cv221-WHA

MOTION TO ACCEPT AMENDED ANSWER

COMES NOW the Defendant, Alabama Emergency Room Administrative Services, P.C., and moves this Court to accept its Amended Answer filed simultaneously herein for reasons stated as follows:

1. This Court entered an Order on April 20, 2007, requiring Defendant to file an Amended Answer on or before April 24, 2007. (Doc. 10).
2. Counsel for Defendant never received notice nor a copy of the Order of April 20, 2007.
3. According to that information contained in the CM/ECF system, while counsel for Defendant is listed as “Lead Attorney” for Defendant, he was not listed as “Attorney to Be Noticed”, as are the other counsel in this case.
4. Counsel for Defendant learned of this Court’s Order (Doc. 10) on April 26, 2007, following a telephone conversation with counsel for Plaintiff, wherein counsel for Plaintiff inquired as to the whereabouts of Defendant’s Amended Answer. Upon checking the CM/ECF system,

counsel for Defendant first discovered this Court's Order of April 20, 2007.¹ Upon contact with CM/ECF, the Clerk of Court's office and this Court's office, it was deduced that due to the fact that counsel for Defendant was not listed as "Attorney to Be Noticed" in the CM/ECF system, counsel for Defendant never received the Order of April 20, 2007.

5. The failure of Defendant to file an Amended Answer on or before April 24, 2007, pursuant to the Order of this Court was inadvertent and not due to any fault of Defendant nor counsel for Defendant.

WHEREFORE, PREMISES CONSIDERED, Defendant respectfully requests this Court:

1. Allow the simultaneously filed Amended Answer in this matter;
2. Find that a hearing on the jurisdictional issue is unnecessary as such issues are now moot, given that set out in Defendant's Amended Answer; and
3. Not tax any costs nor assess any penalties and/or sanctions against Defendant for failure to file its Amended Answer pursuant to this Court's Order of April 20, 2007.

Respectfully submitted this the 26th day of April, 2007.

/s/ Michael J. Cohan
MICHAEL J. COHAN (ASB-6887-A56M)
Attorney for Defendant,
Alabama Emergency Room Administrative
Services, P.C.

¹ In fact, upon review of the Court file on the CM/ECF system, it has been discovered that counsel for Defendant also did not receive Plaintiff's Notice of Filing and attachment thereto, filed April 12, 2007. (Docs. 9-1; 9-2).

OF COUNSEL:

HILL, HILL, CARTER, FRANCO, COLE & BLACK, P.C.
425 SOUTH PERRY STREET (36104)
POST OFFICE BOX 116
MONTGOMERY, ALABAMA 36101-0116
(334) 834-7600
(334) 832-7419 [facsimile]
mcohan@hillhillcarter.com

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the above and foregoing upon all parties by electronically filing the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification to the following via: email this the 26th day of April, 2007.

Brenen G. Ely, Esq.
Joel S. Isenberg, Esq.
Candace L. Hudson, Esq.
Ely & Isenberg, LLC
600 Beacon Parkway West
Suite 104
Birmingham, Alabama 35209

/s/ Michael J. Cohan
MICHAEL J. COHAN (ASB-6887-A56M)